

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 276
3014794

BETWEEN KA FAI JARVIS KWAN
Applicant

AND NOSH FOOD MARKET
LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
No appearance for Respondent

Investigation Meeting: 12 September 2017

Oral Determination: 12 September 2017

**RECORD OF ORAL DETERMINATION OF THE
AUTHORITY**

- A. Nosh Food Market Limited is ordered to pay to Mr Kwan the sum of \$11,625 gross under section 131 of the Act. Payment must be made within seven (7) days of the date of this determination.**
- B. Nosh Food Market Limited is ordered to pay to Mr Kwan the sum of \$71.56 within seven (7) days of the date of this determination.**

Employment relationship problem

[1] Mr Ka Fai Jarvis Kwan is originally from Hong Kong. He started work as a produce manager for Nosh Food Market Limited on 8 March 2010. The terms and conditions of Mr Kwan's employment were set out in a signed individual employment agreement dated 21 April 2016.

[2] Mr Kwan left his employment on 8 June 2017. No issues arise as to the ending of the employment relationship except that Mr Kwan claims he was not paid his final pay. Mr Kwan was paid \$25 for each hour worked and worked 9 hours each day.

[3] No response has been received from Nosh. The Authority has a copy of a letter from Waterstone Insolvency notifying Mr Kwan that Nosh Group Limited has been placed in receivership. That letter overlooks the fact that Nosh Food Market Ltd is the name of the employer set out in the written employment agreement and is still registered on the Companies Register.

[4] There was no appearance for or on behalf of Nosh at the commencement of the investigation meeting. The Notice of Investigation Meeting was served on Nosh at its registered office on 23 August 2017. It was signed for by "M XU" at 11.27 am. No good reason has been given for its failure to attend or be represented. As provided for in clause 12 of Schedule 2 of the Act I have proceeded to act fully in the matter as if Nosh had been represented.

Issue

[5] In order to resolve Mr Kwan's employment relationship problem Mr Kwan must establish he is owed arrears of wages and holiday pay.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from Mr Kwan but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

Arrears of wages

[7] Mr Kwan relies on a payslip he received from Nosh recording his entitlement to annual holidays and alternative holidays as proof of his claims.

[8] The payslip also shows as at 28 May 2017 Mr Kwan had an entitlement to 364.60 hours as annual leave and 9 days of alternative holidays. Mr Kwan has established to my satisfaction that he is owed \$9,115 gross being holiday pay and \$2,025 gross for alternative holidays.

[9] In addition Mr Kwan says he worked 25 hours in the period 29 May to 4 June 2017. Mr Kwan has not been paid for these hours. Mr Kwan says he submitted a timesheet to Nosh showing the hours he had worked. Mr Kwan has established to my satisfaction that he is owed \$625 gross for unpaid wages.

[10] Nosh Food Market Limited is ordered to pay to Mr Kwan the sum of \$11,625 gross under section 131 of the Act. Payment must be made within seven (7) days of the date of this determination.

Costs

[11] Mr Kwan has been put to the expense of paying a filing fee to obtain directions about the payment of his arrears of wages claim. It is appropriate for Mr Kwan to be reimbursed the filing fee of \$71.56.

[12] Nosh Food Market Limited is ordered to pay to Mr Kwan the sum of \$71.56 within seven (7) days of the date of this determination.

Certificate of determination

[13] I direct, pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000 that Mr Kwan be provided with a certificate of determination, sealed with the seal of the Authority recording that within seven (7) days of the date of this determination, Nosh Food Market Limited is to pay Mr Kwan:

- \$11,625 gross being arrears of wages and holiday pay owing to him; and
- \$71.56 nett in costs.

Vicki Campbell
Member of the Employment Relations Authority